IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHARLETTE ROBINSON,	§	
	§	
Plaintiff,	§	
	§	
v.	§	C.A. NO. 1:17-cv-56
	§	
REVENUE CYCLE BILLING	§	
SERVICES, INC.	§	
	§	
Defendant.	§	

COMPLAINT

COMES NOW, Plaintiff CHARLETTE ROBINSON ("Plaintiff") and complains of REVENUE CYCLE BILLING SERVICES, INC., and for her cause of action would show the Court as follows:

INTRODUCTION

1. This action seeks damages, attorneys' fees, expert fees, taxable costs of the court, pre-judgment and post-judgment interest as a result of civilly wrongful conduct in violation of the laws of the United States and the State of Texas, including 42 U.S.C. §1981, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, as amended, and the Texas Commission on Human Rights Act, as amended, and the Family and Medical Leave Act.

PARTIES

2. Plaintiff CHARLETTE ROBINSON is a resident of Travis County, Texas.

3. Defendant REVENUE CYCLE BILLING SERVICES, INC. is an entity which may be served with process through its registered agent, Catherine DiGiaimo at the following address: 12004 Rayo De Luna, Austin, Texas 78732.

JURISDICTION AND VENUE

4. Jurisdiction is conferred on this Court by Title 28 U.S.C. §1331.

5. This action lies in the United States District Court for the Western District of Texas, Austin Division, pursuant to 28 U.S.C. § 1391(b), as the events giving rise to Plaintiff's claims occurred substantially in Travis County, Texas.

CONDITIONS PRECEDENT

6. All conditions precedent have been performed or have occurred.

STATEMENT OF FACTS RELEVANT TO ALL CLAIMS

7. Plaintiff, Charlette Robinson, was hired by Defendant Revenue Cycle Billing Services, Inc. on February 27, 2015 as a Demographic Specialist. Ms. Robinson is African-American.

8. In late 2015, Ms. Robinson was diagnosed with a thyroid tumor. She attended several doctor appointments during working hours related to her tumor. Ms. Robinson disclosed her diagnosis to her manager, and provided doctor notes for the time she had to miss work.

9. On February 5, 2016, Ms. Robinson's manager, Patty O'Neill called Ms. Robinson into her office and informed her that she was going to be put on thirty days probation because of her absences, despite the fact that Ms. Robinson's absences were caused by a medical impairment that substantially limited her in several major life activities, including sleeping and working.

10. On February 29, 2016, Ms. Robinson notified Ms. O'Neill and Revenue Cycle Billing Service Inc.'s human resources representative, Sue, that she was having to go to the emergency room because she was ill. Ms. Robinson was discharged from the hospital that evening, and missed work on the following day, March 1, 2016, because she went to her regular doctor for a follow-up about her tumor. Ms. Robinson notified Sue, the HR representative, prior to her doctor visit on March 1,

2016, that she was going for a follow-up about her tumor, and that she was going to need to take FMLA to have surgery to remove the tumor. Sue e-mailed Ms. Robinson the FMLA forms on the following day, March 2, 2016.

11. On March 4, 2016, Respondent terminated Ms. Robinson's employment because of her absences. However, the absences for which she was terminated were taken because of Ms. Robinson's medical impairment and were covered absences both under the FMLA and the Americans with Disabilities Act.

12. Upon information and belief, non-African-American Demographic Specialists were absent as much as and/or more than Ms. Robinson and were not terminated.

CAUSES OF ACTION

COUNT ONE - DISCRIMINATION ON THE BASIS OF RACE UNDER TITLE VII

13. Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC). Plaintiff received a notice of the right to sue from the EEOC within 90 days of the filing of this complaint.

14. Plaintiff was an employee within the meaning of Title VII and belongs to a class protected under the statute, namely Plaintiff was discriminated against because of her race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §2000e2(a)(1).

15. Defendant is an employer within the meaning of Title VII.

16. Title VII of the Civil Rights Act of 1964 states, in pertinent part, that, "(a) It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex,

or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

17. Defendant intentionally discriminated against Plaintiff because of her race in violation of Title VII by unlawfully discharging her. The unlawful practices committed by Defendant were and are a direct cause of Plaintiff's damages, as more fully set forth below.

COUNT TWO - RACE DISCRIMINATION
UNDER TEXAS COMMISSION ON HUMAN RIGHTS ACT

18. The conduct of the Defendant towards Plaintiff, through its agents, employees, managers, and supervisors, as set forth above, among other activities constitutes race discrimination, in direct violation of §21.001, *et. seq.*, Labor Code, Vernon's Texas Codes Annotated, which states, in pertinent part, that:

> "An employer commits an unlawful employment practice if...the employer...discriminates against an individual...or...classifies an employee...in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any manner the status of an employee."

19. Plaintiff's race was a determining or motivating factor in Defendant's decision to terminate the Plaintiff.

COUNT THREE -
RACE DISCRIMINATION UNDER 42 U.S.C. § 1981

20. 42 U.S.C. §1981 prohibits race discrimination in the making and enforcing of contracts, including the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges and conditions of the contractual relationship.

21. Defendant intentionally discriminated against Plaintiff because of her race in violation

of 42 U.S.C. §1981 by unlawfully terminating Plaintiff's employment because of Plaintiff's race. The unlawful practices committed by Defendant were and are a direct cause of Plaintiff's damages, as more fully set forth below.

COUNT FOUR:
VIOLATION OF THE FMLA

22. The Family and Medical Leave Act contains two distinct provisions: (1) an entitlement clause and (2) an anti-discrimination clause. See 29 U.S.C. §§ 2612, 2615. The entitlement clause provides a series of entitlements which give certain rights to employees such as the right to have their job back once they return from a qualified leave. The FMLA also contains provisions that prohibit an employer from retaliating against an employee for taking FMLA leave. See 29 U.S.C. §2615(a) and 29 U.S.C. §2615(b). Defendants are in willful violation of the FMLA. Defendants violated 29 U.S.C. §2612, §2614 and 29 U.S.C. §2615(a) and 29 U.S.C. §2615(b).

23. Plaintiff was eligible for FMLA leave to cover the absences she took off because of her serious health condition. The FMLA provides that an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period in order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition. By taking leave because of a serious health condition, Plaintiff availed herself of a protected right under the FMLA. She was subsequently terminated. There is a causal connection between the Plaintiff's protected activity and Defendants' decision to terminate Plaintiff. Defendant's decision to terminate Plaintiff was a cause of Plaintiff's damages, as set forth below.

24. The FMLA makes it "unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided" under the statute. 29 U.S.C. § 2615(a)(1). Defendants unlawfully interfered with Plaintiff's rights under the FMLA when they

terminated her employment rather than permitting her to return to work from her leave.

COUNT FIVE:

Denial of Reasonable Accommodation and Discrimination on the Basis of Disability in violation of the ADA and TCHRA

25. Defendants violated by the Americans with Disabilities Act and the Texas Commission on Human Rights Act by refusing to accommodate Plaintiff's disability and by discharging Plaintiff. 42 U.S.C. § 12101 *et seq.;* Texas Labor Code §21.001 *et seq.*

26. Under 42 U.S.C. §12112 and the Texas Labor Code, §21.001 *et seq.*, it is unlawful for an employer to discriminate against any individual with respect to her employment because of that individual's disability or because the employer regards the individual as a person with a disability.

27. Defendants are employers under the ADA and the TCHRA.

28. Plaintiff was qualified for and could perform the essential functions of her job at the time of her termination, with reasonable accommodations. Plaintiff is a qualified individual with a disability, is a qualified individual with a record of a disability, and was regarded by the Defendant as a person with a disability.

29. Plaintiff was meeting her employer's expectations.

30. Plaintiff was terminated as a direct result of her disability, her record of having a disability, and/or because Defendant regarded Plaintiff as a person with a disability.

31. Defendant violated both the ADA and TCHRA by intentionally refusing to accommodate Plaintiff's disability and by discriminating against Plaintiff because of her disability by terminating Plaintiff's employment. Plaintiff's disability and/or being regarded as disabled was a determining or motivating factor in Defendant's decision to terminate Plaintiff's employment.

Plaintiff's disability and/or Defendant's perception of Plaintiff as a person with a disability moved Defendant toward its decision or was a factor that played a part in Defendant's employment decisions as to Plaintiff.

DAMAGES

32. As a result of Defendant's unlawful conduct, Plaintiff has suffered economic and actual damages, including past and future lost income, back wages, interest on back pay and front pay, future wages or front pay, lost earnings in the past and future, lost benefits under the contract or employment relationship, employment benefits in the past, and employment benefits in the future. Plaintiff has also incurred other actual damages as a result of Defendant's unlawful conduct, including but not limited to past and future pecuniary losses, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, and other pecuniary and non-pecuniary losses.

33. Defendant intentionally engaged in an unlawful employment practice. Plaintiff additionally brings suit for compensatory damages, including emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, job search expenses, lost earning capacity in the past and future, and other pecuniary and non-pecuniary losses.

34. The conduct committed by Defendant against Plaintiff is the type of conduct demonstrating malice or reckless indifference to the rights of the Plaintiff. Therefore, Plaintiff additionally brings suit for punitive damages.

35. Plaintiff further brings suit for liquidated damages under the FMLA.

ATTORNEYS' FEES AND EXPERT FEES

36. A prevailing party may recover reasonable attorneys' and experts' fees under Title

VII of the Civil Rights Act of 1964, 42 U.S.C. §1981, the Texas Commission on Human Rights Act, the Americans with Disabilities Act, and the Family and Medical Leave Act. Plaintiff seeks all reasonable and necessary attorneys' fees in this case from Defendant, including preparation and trial of this lawsuit, post-trial, pre-appeal legal services, and any appeals. Plaintiff additionally brings suit for expert fees.

JURY DEMAND

Plaintiff demands a trial by jury of all the issues and facts in this case and tenders herewith the requisite jury fee.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that:

1. The Court assume jurisdiction of this cause;
2. The Court award Plaintiff damages as specified above;
3. The Court award Plaintiff reinstatement or, in the alternative, front pay.
4. The Court award Plaintiff's reasonable attorneys' and expert fees and costs;
5. The Court award Plaintiff pre- and post-judgment interest at the highest rates allowed.

Plaintiff further prays for any such other relief as the Court may find proper, whether at law or in equity.

Respectfully submitted,

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/s/ Kell A. Simon
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